

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #15	CCRB Case #: 202105658	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/13/2021 3:50 PM, Monday, 09/13/2021 9:00 PM, Tuesday, 09/14/2021 12:00 AM	Location of Incident: East 179th Street and Vyse Avenue; 48th Precinct stationhouse	18 Mo. SOL 3/13/2023	Precinct: 48		
Date/Time CV Reported Tue, 09/21/2021 11:40 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 09/21/2021 11:40 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Danilo McLeish	11531	967599	048 PCT
2. POM Joseph Whelan	24140	969426	048 PCT
3. POM Vincent Sanchez	24923	931136	048 PCT
4. PO Oliva Carvajalhernandez	20401	938182	048 PCT
5. SGT Matthew Vantress	00434	946358	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Joseph Whelan	Discourtesy: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Joseph Whelan spoke discourteously to § 87(2)(b)	
B . POM Danilo McLeish	Discourtesy: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish spoke discourteously to § 87(2)(b)	
C . POM Danilo McLeish	Abuse: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish threatened § 87(2)(b) with the use of force.	
D . POM Danilo McLeish	Force: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish used a non-lethal restraining device on § 87(2)(b)	
E . POM Joseph Whelan	Force: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Joseph Whelan used physical force against § 87(2)(b)	
F . POM Joseph Whelan	Abuse: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Joseph Whelan threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
G . POM Danilo McLeish	Abuse: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish threatened § 87(2)(b) with the use of force.	
H . POM Danilo McLeish	Abuse: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish threatened § 87(2)(b) with the use of force.	
I . POM Danilo McLeish	Discourtesy: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish spoke discourteously to § 87(2)(b)	
J . POM Danilo McLeish	Off. Language: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
K . PO Oliva Carvajalherandez	Abuse: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Oliva Carvajal-Hernandez threatened § 87(2)(b) with the use of force.	
L . SGT Matthew Vantress	Abuse: On September 13, 2021, at the 48th Precinct stationhouse, Sergeant Matthew Vantress threatened § 87(2)(b) with the use of force.	
M . POM Vincent Sanchez	Abuse: On September 14, 2021, at the 48th Precinct stationhouse, Police Officer Vincent Sanchez did not process § 87(2)(b) complaint regarding officers.	
N . POM Vincent Sanchez	Discourtesy: On September 14, 2021, at the 48th Precinct stationhouse, Police Officer Vincent Sanchez spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On September 21, 2021, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

At approximately 3:50 p.m. on September 13, 2021, § 87(2)(b) and his girlfriend § 87(2)(b) got into an argument near the intersection of East 179th Street and Vyse Avenue in the Bronx. § 87(2)(b) called 911 and reported that § 87(2)(b) had struck her. Police Officer Danilo McLeish and Police Officer Joseph Whelan of the 48th Precinct responded to the location. Police Officer Whelan told § 87(2)(b) “Don’t fucking move” (**Allegation A: Discourtesy – Word**, § 87(2)(g) § 87(2)(b)) tried to run from the officers. The officers chased him. Police Officer McLeish told § 87(2)(b) “You’re going to get fucking Tased” (**Allegation B: Discourtesy – Word**, § 87(2)(g) **Allegation C: Abuse of Authority – Threat of force**, § 87(2)(g)) He then fired his Taser at § 87(2)(b) as they ran (**Allegation D: Force – Nonlethal restraining device**, § 87(2)(g) § 87(2)(b)) then tripped and fell to the ground. Once he was down, Police Officer Whelan used profanity again towards § 87(2)(b) stating, “Don’t fucking move” and “Turn the fuck over” (**Subsumed in Allegation A**). Police Officer Whelan then grabbed and pulled on § 87(2)(b) hair (**Allegation E: Force – Physical force**, § 87(2)(g)) He then pointed his Taser at § 87(2)(b) head and threatened to use it (**Allegation F: Abuse of Authority – Threat of force**, § 87(2)(g)) Police Officer McLeish also threatened to use his Taser a second time (**Allegation G: Abuse of Authority – Threat of force**, § 87(2)(g))

The officers placed § 87(2)(b) into handcuffs and lifted him to his feet. After he was standing, Police Officer McLeish told him, “You’re going to get fucking stunned,” “Don’t tell them to fucking calm down, bro,” “Shut up, pussy,” and, “I’ll fuck you up” (**Allegation H: Abuse of Authority – Threat of force**, § 87(2)(g) **Allegation I: Discourtesy – Word**, § 87(2)(g) **Allegation J: Offensive Language – Gender**, § 87(2)(g)) Several other officers, including Police Officer Oliva Carvajal-Hernandez, responded to the location and assisted in loading § 87(2)(b) into a police vehicle for transport. While doing so, Police Officer Carvajal-Hernandez told § 87(2)(b) “You’re gonna get drive-stunned” (**Allegation K: Abuse of Authority – Threat of force**, § 87(2)(g))

§ 87(2)(b) was transported to the 48th Precinct stationhouse for arrest processing. He was lodged in a holding cell for several hours. At approximately 9:00 p.m., officers removed him from the holding cell to transport him to Central Booking. While doing so, Sergeant Matthew Vantress, the desk officer, allegedly threatened to use a Taser against § 87(2)(b) (**Allegation L: Abuse of Authority – Threat of force**, § 87(2)(g))

§ 87(2)(b) was later released from custody. At some time in the afternoon on September 14, 2021, he returned to the 48th Precinct stationhouse to retrieve property that had been vouchered during his arrest. There, he spoke to Police Officer Vincent Sanchez. Police Officer Sanchez allegedly refused to let § 87(2)(b) file a complaint about his arrest (**Allegation M: Abuse of Authority – Refusal to process civilian complaint**, § 87(2)(g)) and told him, “Get the fuck out” (**Allegation N: Discourtesy – Word**, § 87(2)(g))

§ 87(2)(b) was arrested during this incident, [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(g), § 87(4-b)

The investigation obtained BWC footage from this incident. It is attached in IA #64 and summarized in IA #66 (Board Review #02-03). No other footage was found for this incident.

Findings and Recommendations

Allegation (A) Discourtesy: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Joseph Whelan spoke discourteously to

§ 87(2)(b)

Allegation (B) Discourtesy: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish spoke discourteously to

§ 87(2)(b)

On September 23, 2021, § 87(2)(b) was interviewed by the CCRB. The CCRB was unable to obtain a statement from § 87(2)(b) (Board Review #04). On March 17, 2022, Police Officer McLeish was interviewed by the CCRB. On May 12, 2022, Police Officer Whelan was interviewed by the CCRB. On May 19, 2022, Police Officer Carvajal-Hernandez was interviewed by the CCRB. On August 10, 2022, Sergeant Matthew Vantress was interviewed by the CCRB.

It is undisputed that § 87(2)(b) and § 87(2)(b) got into an argument over custody of their five-year-old son in front of § 87(2)(b). During the course of this argument, § 87(2)(b) gained custody of § 87(2)(b) cell phone. Police Officer McLeish and Police Officer Whelan responded to the dispute. § 87(2)(b) told § 87(2)(b) to return her phone. § 87(2)(b) turned and started walking towards his vehicle, which was parked on the street nearby. He then turned away from the officers and started running down the street. Both officers chased after him. Police Officer McLeish fired his Taser at § 87(2)(b) as they ran. After a few seconds, § 87(2)(b) tripped and fell to the ground, where the officers placed him in handcuffs.

§ 87(2)(b) stated that he ran from the officers because he was afraid that they were about to use force against him. He did not mention either officer giving a verbal warning before Police Officer McLeish used his Taser. After he fell to the ground, the officers bent down to handcuff him. § 87(2)(b) complained to Police Officer Whelan that Police Officer McLeish was being too rough. Police Officer Whelan replied, "I don't give a fuck." § 87(2)(b) did not mention Police Officer McLeish using profanity.

Police Officer McLeish and Police Officer Whelan both stated that they responded to a report of an assault in progress on Vyse Avenue involving a male perpetrator and a female victim. When the officers arrived on-scene, they found § 87(2)(b) arguing with § 87(2)(b). § 87(2)(b) had scratches visible on the right side of her face. § 87(2)(b) told the officers that § 87(2)(b) had taken her cell phone. When the officers tried to talk to § 87(2)(b) about the argument, he started to walk away from them. Both officers considered § 87(2)(b) to be under arrest at the time, and that he was therefore not permitted to leave.

Police Officer Whelan stated that he told § 87(2)(b) not to move. He did not recall how he phrased this order or if he used profanity while issuing it. § 87(2)(b) then turned and ran from the officers. Police Officer Whelan caught up to § 87(2)(b) after he tripped and fell to the ground. He ordered § 87(2)(b) to turn over. He did not recall how he phrased this command but stated that he likely used "strong language" to gain § 87(2)(b) compliance. He did not recall Police Officer McLeish using profanity during this incident.

Police Officer McLeish did not recall Police Officer Whelan using profanity towards § 87(2)(b) at

any point during this incident. When § 87(2)(b) started running, Police Officer McLeish told him, “Stop or you’re going to get Tased.” He did not recall if he used profanity while making this statement. Later, after § 87(2)(b) fell to the ground, Police Officer McLeish told § 87(2)(b) to give up control of his hands and to stop moving. He did not recall how he phrased these commands. He did not recall if he used profanity while doing so.

Police Officer Whelan’s and Police Officer McLeish’s BWC footage is attached in IA #64 (Board Review #19-20). Both recordings show that § 87(2)(b) was agitated and repeatedly cursed at § 87(2)(b). A young child, identified as their 5-year-old son § 87(2)(b) stands near them. § 87(2)(b) tells the officers that he has taken § 87(2)(b) phone from her and will return it when he lets him take custody of their son. He then starts to walk away with the child. Police Officer Whelan tells him to wait. § 87(2)(b) continues walking. At 2:45 into Police Officer Whelan’s recording, he tells § 87(2)(b) “Don’t fucking move.” § 87(2)(b) then turns and starts running down the street. Both officers pursue him. At 2:40 into Police Officer McLeish’s recording, he tells § 87(2)(b) “Yo, you’re going to get fucking Tased.” At 3:00 into Police Officer Whelan’s recording, § 87(2)(b) runs into a table set up on the sidewalk and falls to the ground, landing on his left side. Police Officer Whelan tells § 87(2)(b) “Don’t fucking move,” and, “Turn the fuck over.” At 3:05 into Police Officer McLeish’s recording, he tells § 87(2)(b) “You’re going to get fucking Tased.”

NYPD Patrol Guide procedure 200-02 states that the officers are expected to render services to the public with courtesy and civility (Board Review #05).

An officer may use limited profanity when trying to gain control of a dynamic situation. They are not permitted to use profanity when it is intended only to belittle or insult a person. PD v. Pichardo, DAO-DCT Case #2015-15012 (Board Review #06).

§ 87(2)(g)
The officers were responding to a domestic dispute taking place in the street. The BWC footage shows that § 87(2)(b) was agitated and uncooperative. He acknowledged to the officers that he had taken § 87(2)(b) property from her. When the officers tried to discuss the matter, § 87(2)(b) attempted to leave. When Police Officer Whelan told him not to go, § 87(2)(b) at first ignored him. When Police Officer Whelan reiterated this command, § 87(2)(b) fled, leading the officers in a foot pursuit.

§ 87(2)(g) § 87(2)(b) hostile attitude, his disregard for the officers’ commands and his flight from the officers, § 87(2)(g)

§ 87(2)(g)
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§ 87(2)(g)

Allegation (C) Abuse of Authority: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish threatened § 87(2)(b) with the use of force.

Allegation (D) Force: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish used a non-lethal restraining device on § 87(2)(b)

It is undisputed that § 87(2)(b) fled from the officers. Both officers ran after him. During the

pursuit, Police Officer McLeish fired his Taser at § 87(2)(b). The darts struck § 87(2)(b) in the back. A few seconds later, § 87(2)(b) fell to the ground, at which point the officers were able to catch up to him and place him in handcuffs.

§ 87(2)(b) stated that he fled from the officers because he feared that they were about to take hostile action towards him. He started running northbound on Vyse Avenue. As he ran, he felt a biting sensation in his back. He did not recognize at first what had caused this sensation. He did not recall if he felt an electrical shock at the time. § 87(2)(b) continued running. A few moments later, he ran into a table that somebody had set up on the sidewalk. He then fell to the ground. The two officers then caught up to § 87(2)(b) and handcuffed him. § 87(2)(b) found that the biting sensation in his back had been caused by the prongs of a Taser. He did not know which officer had fired the Taser. The prongs were still hooked in § 87(2)(b) back, though he did not state whether they had pierced his skin or just his clothing. § 87(2)(b) sustained bruising to his face and a dislocated shoulder from being handcuffed but did not recall suffering any injuries related to the Taser. § 87(2)(b) deliberately avoided requesting medical attention while at the stationhouse because he did not want to lengthen his time in police custody. When he eventually went to Bronx Central Booking, he requested medical attention and was taken to § 87(2)(b) Hospital. The hospital, however, discharged him without treating him.

Police Officer McLeish stated that, before running, § 87(2)(b) briefly assumed a “fighting stance” by holding his hands up at chest level with palms open. § 87(2)(b) then turned and fled. While the officers chased him, § 87(2)(b) stopped and turned towards the officers for a few seconds, standing again in the same fighting stance. He then turned again and resumed running. Police Officer McLeish decided to use his Taser to subdue § 87(2)(b) because he had fled from the officers and assumed a fighting stance. He felt that his Taser was the lowest level of force he had at his disposal that would stop § 87(2)(b) flight. Police Officer McLeish drew his Taser and called out to § 87(2)(b) warning him that he would be Tased if he did not stop. He did not recall his exact phrasing. § 87(2)(b) continued running. Police Officer McLeish pointed his Taser at § 87(2)(b) from behind. His intention was to fire the Taser’s darts so that one struck § 87(2)(b) upper body and the other struck his lower body. He did not aim at a specific part of § 87(2)(b) body. He estimated that he was about five feet away from § 87(2)(b). When he fired, one of the darts snagged the back of § 87(2)(b) shirt. Police Officer McLeish could not tell if the dart made contact with § 87(2)(b) skin. He did not see where the second dart went. § 87(2)(b) continued running. Police Officer McLeish therefore assumed that the Taser had not worked properly. He continued chasing § 87(2)(b). He did not use his Taser again.

Police Officer Whelan made no mention of § 87(2)(b) assuming a hostile or fighting stance towards the officers during this encounter. When § 87(2)(b) fled, both officers drew their Tasers. As they ran after him, Police Officer McLeish warned § 87(2)(b) that he would fire his Taser. Police Officer Whelan did not recall how Police Officer McLeish phrased this warning. § 87(2)(b) continued running. Police Officer McLeish then fired his Taser. He was about ten feet behind § 87(2)(b) at the time. Police Officer Whelan could not tell where Police Officer McLeish was firing the Taser. One of the darts struck § 87(2)(b) back. Police Officer Whelan did not see where the other dart went. § 87(2)(b) then fell to the ground.

Sergeant Mohammad Sahidullah of the 48th Precinct prepared a TRI report to document § 87(2)(b) arrest. It states that Police Officer McLeish fired a Taser at § 87(2)(b) but that the darts failed to penetrate his skin. A supplementary TRI report prepared by Police Officer McLeish confirms that he used a Taser on § 87(2)(b) but that the darts did not penetrate his skin. It further states that Police Officer McLeish used this force because § 87(2)(b) fled from him (Board Review #07).

The investigation was unable to obtain § 87(2)(b) medical records. No Medical Treatment of Prisoner Reports were prepared for § 87(2)(b) (Board Review #07).

As discussed above, the officers' BWC footage shows that § 87(2)(b) was hostile and uncooperative when the officers arrived at the location. He acknowledged taking § 87(2)(b) phone from her and tried to walk away from the officers. He then turned and started to run. § 87(2)(b) is not seen holding up his hands or otherwise assuming a fighting stance. Both officers chased him. At 2:30 into Police Officer McLeish's recording, he draws his Taser and points it at § 87(2)(b). He tells § 87(2)(b) "Yo, you're going to get fucking Tased." A popping sound is then heard. Police Officer McLeish's Taser is off-screen at that moment, so it is unclear where the Taser was pointed. A few seconds later, § 87(2)(b) runs into a table set up on the sidewalk and falls to the ground. At that time, wires are seen extending from the end of Police Officer McLeish's Taser. It is unclear where the wires extend to or whether the darts at the ends of the wires are attached to § 87(2)(b) body (Board Review #02).

The officers' BWC footage shows that § 87(2)(b) did not assume the "fighting stance" that Police Officer McLeish described in his statement. He does not assume an overtly hostile posture towards them and does not physically threaten them.

NYPD Patrol Guide procedure 221-08 states that conducted energy weapons such as Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or another person. Active resistance is defined as physically evasive movements intended to defeat an officer's attempt at controlling a person, such as bracing or tensing their body, pushing away from officers or verbally signaling an intention to avoid custody. Fleeing should not be the sole justification for using a Taser against a subject. Officers should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use a Taser on a fleeing subject. Officers are also directed, when possible, to verbally warn a subject before using a Taser (Board Review #08).

§ 87(2)(g)

§ 87(2)(b) tried to defeat his arrest by fleeing, rather than by fighting or threatening the officers. He did not pose an immediate danger to himself, the officers or § 87(2)(b) at that moment. § 87(2)(g)

Allegation (E) Force: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Joseph Whelan used physical force against

§ 87(2)(b)

Allegation (F) Abuse of Authority: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Joseph Whelan threatened § 87(2)(b) with the use of force.

Allegation (G) Abuse of Authority: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish threatened § 87(2)(b) with the use of force.

It is undisputed that one of § 87(2)(b) arms was in a sling during this incident. Accounts varied as to which arm was in a sling, but the BWC footage shows that it was on his left arm. § 87(2)(b) took his arm out of the sling before he fled from the officers. Shortly after Police Officer McLeish

used his Taser on § 87(2)(b) fell to the ground. The officers then caught up to § 87(2)(b) and placed him in handcuffs.

§ 87(2)(b) stated that his arm was in a sling because he had dislocated his shoulder previously in an unrelated incident. When he fell to the ground, he landed on his front. Police Officer McLeish, the same officer who had used a Taser on him, straddled § 87(2)(b) back and grabbed him by the hair. Police Officer McLeish then punched § 87(2)(b) twice on his left eye. The action caused bruising to § 87(2)(b) left eye. § 87(2)(b) denied that he moved his body as Police Officer McLeish struck him, explaining that he had been arrested before and knew that it was futile to resist. Police Officer McLeish then pulled § 87(2)(b) injured left arm behind his back to handcuff him. This caused § 87(2)(b) left shoulder to dislocate again. § 87(2)(b) made no mention of either Police Officer Whelan or Police Officer McLeish threatening to use a Taser against him after he fell to the ground.

The investigation was unable to obtain § 87(2)(b) medical records. No Medical Treatment of Prisoner Reports were prepared for § 87(2)(b) (Board Review #07).

Police Officer Whelan stated that as § 87(2)(b) ran from the officers, he drew his Taser and held it at his side. He explained that he intended only to display it to § 87(2)(b) to gain his compliance. He denied having any intention to use it at that time. Once § 87(2)(b) fell to the ground, Police Officer Whelan bent down over him and grabbed § 87(2)(b) by his hair. He did so in order to gain control of § 87(2)(b) body. He and Police Officer McLeish ordered § 87(2)(b) to turn over so that they could rear-cuff him. He initially stated that he did not have to take any further actions to gain § 87(2)(b) compliance. He then recalled that he did threaten to use his Taser while § 87(2)(b) was on the ground. He pointed his Taser somewhere on § 87(2)(b) body. He did not recall where he aimed the Taser. He stated that it was possible that he pointed the Taser at § 87(2)(b) head, but he denied holding it against § 87(2)(b) head. He did not recall himself or Police Officer McLeish using other physical force against § 87(2)(b) while he was on the ground beyond holding his hair.

Police Officer McLeish stated that after § 87(2)(b) fell down, he and Police Officer Whelan ordered him to give them his hands. § 87(2)(b) told the officers that he refused to do so. The two officers then leaned down over § 87(2)(b) grabbed his arms and pulled them behind his back. § 87(2)(b) pulled his hands away from the officers, but the officers kept their grips and moved § 87(2)(b) arms behind his back. Police Officer McLeish denied that he or Police Officer Whelan used any further physical force against § 87(2)(b). He denied that he pulled § 87(2)(b) hair or punched him. He denied seeing Police Officer Whelan pull § 87(2)(b) hair or punch him.

Police Officer Whelan's BWC footage depicts his handling of his Taser (Board Review #02). At 3:00 into the recording, § 87(2)(b) runs into a table and falls to the ground. He lands on his back. Police Officer Whelan then grabs § 87(2)(b) by the back of his head, gripping his hair, and hinges § 87(2)(b) torso forward towards his legs. Police Officer Whelan then points his Taser at the left side of § 87(2)(b) head. He holds the Taser about an inch from § 87(2)(b) head. The Taser's red targeting lasers are seen on § 87(2)(b) left cheek and neck. Police Officer Whelan tells him several times to turn over. § 87(2)(b) replies that he cannot, due to his arm injury. At 3:28 into the recording, Police Officer Whelan pushes § 87(2)(b) down to his left side. The Taser is not visible again after that moment. Police Officer Whelan releases § 87(2)(b) hair. He is not seen grabbing it again. Police Officer Whelan is not seen punching § 87(2)(b) at any time.

Police Officer McLeish's BWC footage also depicts him and Police Officer Whelan interacting with § 87(2)(b) on the ground (Board Review #02). At 2:45 into the recording, § 87(2)(b) falls

to the ground by the table. Police Officer McLeish is still holding his Taser in his right hand. Its wires are still connected to § 87(2)(b) body and lead back to the Taser's cartridge. Police Officer Whelan holds his Taser to § 87(2)(b) head. At 3:02 into the recording, Police Officer McLeish points his Taser at § 87(2)(b) again. This time, the Taser's cartridge has been removed. He points the Taser at § 87(2)(b) head, holding it about two feet away. He states, "Bro, you're going to get fucking Tased." At 3:09 into the recording, he puts the Taser down. Police Officer McLeish is not seen grabbing § 87(2)(b) hair or punching him.

Based on the officers' testimony and the BWC footage, the investigation determined that Police Officer Whelan, not Police Officer McLeish, grabbed § 87(2)(b) by his hair.

NYPD Patrol Guide procedure 221-01 states that officers may use physical force to place a person in custody. All applications of force must be reasonable under the circumstances. Factors to consider when determining whether a particular use of force was reasonable include the nature of the crime they are accused of, the actions taken by the subject, the immediacy of the perceived threat the subject poses, and whether the subject is actively resisting custody (Board Review #09).

NYPD Patrol Guide procedure 221-08 states that conducted energy weapons such as Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or another person. Active resistance is defined as physically evasive movements intended to defeat an officer's attempt at controlling a person, including bracing or tensing their body, pushing away from officers or verbally signaling an intention to avoid custody. Officers are advised to aim their Tasers at the subject's lower center mass when discharging at the front of their bodies, and below the neck area for discharges at their backs. Officers are directed to avoid discharging at an individual's head, neck and chest when possible (Board Review #08).

§ 87(2)(g)
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§ 87(2)(g)

§ 87(2)(g). Neither officer is seen striking § 87(2)(b) at any point during his arrest. § 87(2)(g). The footage shows that once § 87(2)(b) fell, Police Officer Whelan grabbed him by his hair. Police Officer Whelan pushed § 87(2)(b) torso forward towards his legs and held a Taser up to his head. Police Officer McLeish verbally threatened to use his Taser again as well.

§ 87(2)(g) § 87(2)(b) Police Officer Whelan appears to have held § 87(2)(b) in complete physical control at this time. § 87(2)(b) is not seen offering any physical resistance. Police Officer Whelan holds § 87(2)(b) down in a bent-over position, with his torso pressed down towards his legs. Both officers then told § 87(2)(b) to turn over. It would be impossible, however, for § 87(2)(b) to have complied while Police Officer Whelan kept him in the bent-over position. It was only when Police Officer Whelan lifted § 87(2)(b) head up and moved § 87(2)(b) body himself that § 87(2)(b) came into the face-down position that Police Officer Whelan desired.

Since Police Officer Whelan prevented § 87(2)(b) from complying with instructions by holding him by his hair in the bent-over position, § 87(2)(g)

§ 87(2)(g)

Allegation (H) Abuse of Authority: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish threatened § 87(2)(b) with the use of force.

Allegation (I) Discourtesy: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish spoke discourteously to § 87(2)(b)

Allegation (J) Offensive Language: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Danilo McLeish made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

§ 87(2)(b) made no mention of Police Officer McLeish or any other officers threatening to use force against him between when he was placed in handcuffs and when he was removed from the arrest location. He did not mention any officers using discourteous or offensive language towards him during that time.

Police Officer McLeish did not recall using profanity at any point during the incident. He did not recall referring to § 87(2)(b) as a “pussy.” He did not recall threatening to use his Taser against § 87(2)(b) after he was handcuffed.

Police Officer McLeish’s BWC footage records his interaction with § 87(2)(b) including the period after he and Police Officer Whelan handcuffed § 87(2)(b) (Board Review #02). At 4:35 into the recording, the officers lift § 87(2)(b) to his feet. § 87(2)(b) states that he wants to give his belongings to an unidentified bystander while he is in custody. He does not make any movements at that time. Police Officer McLeish points his Taser at § 87(2)(b) chest and states, “Bro, I’m a tell you, you’re going to get fucking stunned, bro. Stop.” At 5:25 into the recording, § 87(2)(b) states, “Calm down.” Police Officer McLeish replies, “Nah, don’t tell them to fucking calm down, bro. Shut up, pussy. I’ll fuck you up. Shut up.” § 87(2)(b) is not seen making any movements at that time either.

When Police Officer McLeish was shown this BWC footage, he stated that he made those statements in the “heat of the moment” in order to gain § 87(2)(b) compliance.

NYPD Patrol Guide procedure 200-02 states that the officers are expected to render services to the public with courtesy and civility (Board Review #05).

NYPD Patrol Guide procedure 203-10 forbids officers from using discourteous or disrespectful remarks regarding another person’s gender or gender identity/expression (Board Review #10).

An officer may use limited profanity when trying to gain control of a dynamic situation. They are not permitted to use profanity when it is intended only to belittle or insult a person. PD v. Pichardo, DAO-DCT Case #2015-15012 (Board Review #06).

NYPD Patrol Guide procedure 221-08 states that conducted energy weapons such as Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or another person. Officers are advised to issue a verbal warning to the subject before deploying their Taser. Tasers should never be used in either cartridge or drive-stun mode on a rear-cuffed prisoner (Board Review #08).

§ 87(2)(g)

§ 87(2)(g)

that § 87(2)(b) was rear-cuffed and was not offering resistance, § 87(2)(g)

As discussed above, both officers had used profanity towards § 87(2)(b) earlier in the incident. Those earlier remarks were made while the officers were attempting to chase and then subdue § 87(2)(b)

By this point in the incident, however, § 87(2)(b) had already been stopped and had been restrained with handcuffs. He was not offering any physical resistance at the time, § 87(2)(g)

Allegation (K) Abuse of Authority: On September 13, 2021, at the intersection of East 179th Street and Vyse Avenue in the Bronx, Police Officer Oliva Carvajal-Hernandez threatened § 87(2)(b) with the use of force.

It is undisputed that several additional officers, including Police Officer Carvajal-Hernandez, arrived on-scene after Police Officer McLeish and Police Officer Whelan handcuffed § 87(2)(b). These officers loaded § 87(2)(b) into Police Officer Carvajal-Hernandez's vehicle so she could transport him to the 48th Precinct stationhouse. As they did so, Police Officer Carvajal-Hernandez threatened to use her Taser on § 87(2)(b). She did not ultimately use her Taser.

§ 87(2)(b) stated that when the officers moved him to the vehicle, the officers tried to push him inside rather than let him get inside at his own pace. He denied doing anything to prevent the officers from loading him into the vehicle. § 87(2)(b) heard one of the officers around him state, "Move out of the way, let me Tase him." He did not see which officer made this statement. He noticed that several officers were holding Tasers at the time.

Police Officer Carvajal-Hernandez stated that she arrived either right as or just after Police Officer McLeish and Police Officer Whelan handcuffed § 87(2)(b). She did not know what had happened prior to her arrival. The other officers on-scene escorted § 87(2)(b) to her vehicle for transport. § 87(2)(b) started shouting and cursing when he arrived at the vehicle. He also tensed his body to prevent officers from moving him into the vehicle. Police Officer Carvajal-Hernandez did not recall if the officers escorting § 87(2)(b) took any physical actions to gain his compliance. She responded to § 87(2)(b) actions by telling him to stop resisting and to calm down. She also told him that he would be Tased if he did not stop resisting. She did not recall how she phrased this warning, whether she threatened to use the Taser in drive-stun mode, or whether she drew or pointed her Taser while issuing it. She explained that she made the threat to gain § 87(2)(b) compliance. She threatened to use her Taser specifically because § 87(2)(b) was physically uncooperative with the escorting officers.

Police Officer Carvajal-Hernandez did not make a BWC recording of the incident. Her partner, Police Officer Algenis Flores, did make a recording (Board Review #21). At 2:20 into the

recording, Police Officer Flores approaches a group of officers who walk § 87(2)(b) towards a marked SUV. § 87(2)(b) tries to pull away from the officers. He shouts that he is not resisting. At 3:05 into the recording, they arrive at the marked SUV. § 87(2)(b) demands to know why he is being arrested. The officers hold him against the side of the vehicle. Police Officer Carvajal-Hernandez tells him to calm down and that the officers were going to search him. The officers then start pushing § 87(2)(b) towards the SUV's door. § 87(2)(b) tells them to "hold on" and pushes back with his legs. He shouts, "Stop grabbing me so fucking rough." At 4:25 into the recording, Police Officer Carvajal-Hernandez draws her Taser and states, "You're gonna get drive-stunned. Listen, listen, listen, you're going to get drive-stunned. Get in the car. Thank you." The officers then push § 87(2)(b) inside and shut the door behind him. Neither Police Officer Carvajal-Hernandez nor any other officers are seen using a Taser at that time.

NYPD Patrol Guide procedure 221-08 states that conducted energy weapons such as Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or another person. Officers are advised to issue a verbal warning to the subject before deploying their Taser. Tasers should never be used in either cartridge or drive-stun mode on a rear-cuffed prisoner (Board Review #08).

§ 87(2)(g)
§ 87(2)(b) The BWC footage shows that § 87(2)(b) did try to prevent the officers from loading him into Police Officer Carvajal-Hernandez's vehicle. § 87(2)(g)

Allegation (L) Abuse of Authority: On September 13, 2021, at the 48th Precinct stationhouse, Sergeant Matthew Vantress threatened § 87(2)(b) with the use of force.

It is undisputed that after Police Officer McLeish and Police Officer Whelan arrested § 87(2)(b) Police Officer Carvajal-Hernandez and Police Officer Flores transported him to the 48th Precinct stationhouse for processing. They presented him at the front desk, where Sergeant Vantress worked as the desk officer. Police Officer McLeish and Police Officer Whelan separately drove to the stationhouse as well. § 87(2)(b) was kept in a holding cell for several hours before being moved to Bronx Central Booking.

§ 87(2)(b) stated that after he waited in the holding cell for several hours, Police Officer McLeish came into the holding cell area and told him that he needed to go to Central Booking. Police Officer McLeish started to remove § 87(2)(b) shoelaces and the drawstring from his waistband. § 87(2)(b) pulled away from Police Officer McLeish. Sergeant Vantress then entered the holding cell area and told § 87(2)(b) that he would use a Taser against him. § 87(2)(b) did not recall the specific phrasing of this threat. He did not state whether Sergeant Vantress had a Taser with him. Police Officer Welchen then loaded § 87(2)(b) into a vehicle and drove him to Central Booking.

Sergeant Vantress did not recall the incident. Prior to his CCRB interview, he viewed a portion of Police Officer McLeish's BWC recording, which showed officers presenting § 87(2)(b) at the front desk and then lodging him in a holding cell. He did not recall the interaction after viewing the recording. He did not recall what happened to § 87(2)(b) after he was placed in the cell. He did not recall any § 87(2)(b) getting into any arguments or disputes while in the holding cell, including any about his shoelaces or drawstrings. He did not recall himself or any other officers

threatening to use a Taser on § 87(2)(b)

Police Officer Whelan stated that he and Police Officer McLeish returned to the stationhouse after § 87(2)(b) arrest. At approximately 9:00 p.m., Police Officer Whelan removed § 87(2)(b) from his holding cell to transport him to Bronx Central Booking. He told § 87(2)(b) that he would have to remove the laces from his shoes before they left. § 87(2)(b) complained and objected to the removal but did not make any physical movements. Police Officer Whelan, Police Officer McLeish and two other officers he could not identify held § 87(2)(b) hands behind his back but did not otherwise restrain him or use force against him. Police Officer Whelan did not recall any officers threatening to use a Taser against § 87(2)(b). He did not recall who the desk officer was at the time of this interaction.

Police Officer McLeish stated that he returned to the stationhouse shortly after § 87(2)(b) arrest. § 87(2)(b) was standing at the front desk when he arrived. Police Officer McLeish went into the stationhouse's muster room. He denied having any further interaction with § 87(2)(b) that day. He was not aware of § 87(2)(b) getting into any disputes with officers, or of an officer threatening to use a Taser against § 87(2)(b). He denied transporting § 87(2)(b) to Central Booking.

Police Officer Carvajal-Hernandez stated that she and her partner, Police Officer Flores, drove § 87(2)(b) to the stationhouse after his arrest. She did not recall if she had any further interaction with § 87(2)(b) after transporting him. She did not recall officers arguing with § 87(2)(b). She did not recall an officer threatening to use a Taser against § 87(2)(b).

The command log and prisoner holding pen roster record that § 87(2)(b) arrived at the stationhouse at 4:00 p.m. and was subsequently transported to Bronx Central Booking at 9:00 p.m. (Board Review #11).

No video footage was found that depicted § 87(2)(b) exiting the holding cells or being transported to Central Booking.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (M) Abuse of Authority: On September 14, 2021, at the 48th Precinct stationhouse, Police Officer Vincent Sanchez did not process § 87(2)(b) complaint regarding officers.

Allegation (N) Discourtesy: On September 14, 2021, at the 48th Precinct stationhouse, Police Officer Vincent Sanchez spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that he was released from custody on the night of September 13, 2021. At an unknown time in the afternoon on September 14, 2021, he went back to the stationhouse in order to file a complaint against the officers who had arrested him. There, he encountered a uniformed officer named "Sanchez" standing in front of the building. This officer asked § 87(2)(b) why he was there. § 87(2)(b) stated that he wanted to file a report about his arrest. The officer told § 87(2)(b) that he would not be allowed to speak to anybody inside the stationhouse. He also told § 87(2)(b) "Get the fuck out." § 87(2)(b) left the stationhouse without ultimately filing his complaint.

A review of the 48th Precinct's roll call on September 14, 2021, found that two officers named "Sanchez" were on duty that afternoon. Police Officer Ruben Sanchez started his tour at 3:00 p.m. and was assigned to patrol. Police Officer Vincent Sanchez worked from 7:11 a.m. until 3:40 p.m. (Board Review #12). Since Police Officer Vincent Sanchez's assignment would have placed him outside of the stationhouse, where the interaction with § 87(2)(b) took place, the investigation has identified him as the subject officer.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review #17).
- Police Officer Whelan has been a member of the service for two years and this is the first CCRB complaint in which he has been identified as a subject.
- Police Officer McLeish has been a member of the service for three years and has been a subject in four previous CCRB complaints and eight allegations, one of which was substantiated.
 - 202008256 involved a substantiated allegation of discourtesy (word). The Board recommended command discipline A. The NYPD declined to impose discipline.
 - § 87(2)(g)
- Police Officer Carvajal-Hernandez has been a member of the service for seventeen years and has been a subject in six previous CCRB complaints and seven allegations, two of which were substantiated.
 - 200810322 involved a substantiated allegation of refusal to provide name and/or shield number. The Board recommended that she receive instructions. The NYPD

- o 200910434 involved a substantiated allegation of discourtesy (word). The Board recommended that she receive charges. The NYPD imposed command discipline B.

§ 87(2)(g)

- This complaint was not suitable for mediation.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on September 14, 2022. The results will be included in the case file upon receipt.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Investigator:	<u>Owen Godshall</u> Signature	<u>SI Owen Godshall</u> Print Title & Name	<u>11/04/2022</u> Date
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Squad Leader: Simon Wang IM Simon Wang 11/04/22
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____